

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Juan Arango	Team: Squad #9	CCRB Case #: 202004161	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 06/04/2020 9:30 PM	Location of Incident: On Penn Street, between Bedford Avenue and Wythe Avenue	Precinct: 90	18 Mo. SOL 12/4/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 06/10/2020 2:41 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 06/10/2020 2:41 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Shakira Herrera	09753	968489	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: An officer used pepper spray against § 87(2)(b)	
B. An officer	Force: An officer used physical force against § 87(2)(b)	
C. Officers	Abuse: Officers did not obtain medical treatment for § 87(2)(b)	

### Case Summary

On June 10, 2020, § 87(2)(b) filed the following complaint with the CCRB via the CCRB's website.

On June 4, 2020, at approximately 9:30 p.m., § 87(2)(b) and her friend, § 87(2)(b) were marching with other protesters on Penn Street, near Wythe Avenue in Brooklyn. During the protest, PO1 placed § 87(2)(b) in handcuffs. Simultaneously, PO2 came towards § 87(2)(b) and pepper sprayed her on the face (**Allegation A: Force – Pepper Spray, § 87(2)(g)**). PO4 allegedly pushed § 87(2)(b) flat onto the ground, leaving a bruise on her back (**Allegation B: Force – Physical Force – Push, § 87(2)(g)**). PO4 then placed § 87(2)(b) in handcuffs. Both § 87(2)(b) and § 87(2)(b) were taken in handcuffs to the intersection of Bedford Avenue and Penn Street. Neither PO2 nor PO4 obtained medical treatment for § 87(2)(b) (**Allegation C: Abuse of Authority: Refusal to obtain medical treatment, § 87(2)(g)**).

At the end, § 87(2)(b) and § 87(2)(b) were transported to the 90<sup>th</sup> Precinct stationhouse and released with summonses.

The investigation obtained both summonses issued to § 87(2)(b) and § 87(2)(b) for violating any emergency measure established by the mayor (**Board Review 01**) (**Board Review 02**).

There is no video evidence regarding this incident.

### Findings and Recommendations

**Allegation (A) Force: An officer used pepper spray against § 87(2)(b)**

**Allegation (B) Force: An officer used physical force against § 87(2)(b)**

**Allegation (C) Abuse of Authority: Officers did not obtain medical treatment for § 87(2)(b)**

### Known Facts and General Description

§ 87(2)(b) could not describe the officer who pepper sprayed her (PO2) or the officer who used force against her (PO4), other than being males. She described another officer she interacted with (PO3) as a 6'0" tall white male in his 40's, with heavy build, bald, and wearing a uniformed white shirt. She stated that PO3 appeared to be directing the other officers and was the only officer wearing a white shirt in her immediate vicinity. § 87(2)(b) had difficulty remembering the specific role for each of the officers involved. § 87(2)(b) believed PO2 was a different officer than PO3; however, she was not sure because § 87(2)(b) insisted that she observed PO3 pepper spraying § 87(2)(b).

§ 87(2)(b) described the officer who pepper-sprayed § 87(2)(b) as a white male in a uniformed white shirt. She could not see additional features because the officer's back was to her. § 87(2)(b) only witnessed § 87(2)(b) on the ground but did not see an officer use force against her and could not describe any details for the officer guarding § 87(2)(b).

### Body-Worn Camera

On June 12, 2020, the investigation requested BWC footage related to this investigation (**Board Review 05**). The NYPD Legal Bureau conducted an axon search for June 4, 2020, at approximately 9:30 p.m., in the confines of the 90<sup>th</sup> Precinct, for any officers, including the Strategic Response, Groups, Critical Response Command and Emergency service Unit. This search yielded negative results.

On July 24, 2020, a second BWC request was submitted after identifying PO Herrera (Tax #968489) as the officer who issued both summonses to § 87(2)(b) and § 87(2)(b).

(**Board Review 06**). The NYPD Legal Bureau conducted an axon search for June 4, 2020, at approximately 9:30 p.m., in the confines of the 90<sup>th</sup> Precinct, for PO Herrera and both summons numbers; however, this search yielded negative results.

The investigation reviewed CCRB 202003962, 202004204, 202003980, 202004647, 202004071 BWC requests and results. However, none of the video footage was relevant to this case.

#### **NYPD Documents Reviewed**

The investigation obtained summons # § 87(2)(b) and # § 87(2)(b) issued to § 87(2)(b) and § 87(2)(b). Both summonses were issued by PO Herrera of the 90<sup>th</sup> Precinct (**Board Review 01**) (**Board Review 02**).

The investigation in CCRB 202004204 requested the Detail Memorandum, Post-Event Memorandum, Zone/Sector/Post Maps and UF-49 from Patrol Borough Brooklyn North (PBBN) (**Board Review 07**). In response, PBBN specified that these documents were not prepared at their command. Upon requesting the Detailed Roster, PBBN provided a roster which listed several officers posted at Cadman Park Plaza, a location far from Penn Street and Wythe Avenue. This roster did not provide any relevant information pertaining this complaint. The investigation consulted with Internal Affairs Bureau (IAB) to determine why a different roster was provided to the CCRB (**Board Review 08**). On October 14, 2020, IAB confirmed that no additional detailed rosters were prepared by Patrol Borough Brooklyn North.

The investigation in CCRB 202003980, obtained NYPD TARU footage for two ARGUS cameras located at Bedford Avenue and Penn Street. Neither camera captured this incident (**Board Review 19**).

#### **Concurrent Investigations**

There are no concurrent investigations to the knowledge of the investigation.

#### **Ranking Officers**

Deputy Chief Charles McEvoy (Tax #895710) was identified as the highest-ranking officer at Penn Street and Wythe Avenue on June 4, 2020. The investigation was unable to interview DC McEvoy because he is in the process of retiring from the NYPD. On May 10, 2021, DAO confirmed that DC McEvoy is currently on terminal leave (**Board Review 09**).

#### **Officers Interviewed**

On September 10, 2020, the CCRB interviewed PO Herrera (**Board Review 10**). PO Herrera explained to the CCRB that she was mobilized to Penn Street, between Bedford Avenue and Wythe Avenue in Brooklyn. While PO Herrera stood on the street, she observed PO1 coming toward her direction with § 87(2)(b) in zip-tie handcuffs. PO1 approached PO Herrera with § 87(2)(b) an unidentified male, two other officers and told PO Herrera to take § 87(2)(b) to the 90<sup>th</sup> Precinct stationhouse. PO Herrera became in charge of § 87(2)(b) while each of the other two officers, PO2 and PO3, oversaw § 87(2)(b) and the unidentified male. PO Herrera described PO1 as a Hispanic or African American male, in his 40's, 5'10" tall, bald, in uniform, wearing a white shirt. PO Herrera could not provide a description for PO2 and PO3. PO Herrera did not know which command PO1 was assigned to, but she explained he was not from the 90<sup>th</sup> Precinct. PO Herrera did not participate in or observe these arrests.

PO Herrera was informed by other officers that they were going to be picked up by a marked NYPD van from Housing Bureau 3 and she waited with a group of officers and arrestees at Penn Street and Bedford Avenue. PO Herrera did not hear § 87(2)(b) complaining about being pepper sprayed or requesting any medical attention. § 87(2)(b) appeared to be physically well. Approximately 10 minutes later, a marked NYPD van picked up PO Herrera, § 87(2)(b) the unidentified male, PO2, PO3, and PO4, who was also not

described. Upon arriving at the 90<sup>th</sup> Precinct stationhouse, PO Herrera exited the van with § 87(2)(b) and entered the stationhouse. The desk Sergeant for this day told PO Herrera to issue a summons to § 87(2)(b) for violating the curfew. At some point, PO Herrera noticed that § 87(2)(b) and the unknown male were left alone by PO2 and PO3 at the stationhouse. As a result, the desk Sergeant instructed PO Herrera to issue a summons to them as well. § 87(2)(b) and § 87(2)(b) were put inside a holding cell and released with a summons. PO Herrera explained that neither § 87(2)(b) nor § 87(2)(b) made any complaint while they were with her.

PO Herrera explained to the CCRB that she was not wearing a BWC on scene because they were told by a supervisor that due to the amount of BWC dropped on the street during the protests, they should not wear them. She was also told not to wear her BWC at the stationhouse.

On September 20, 2020, the undersigned investigator in CCRB case 202004204 interviewed Deputy Inspector Timothy Skretch (**Board Review 11**) after a police officer, who was also interviewed, identified him as one of the ranking officers on scene during the incident. DI Skretch explained he did not use force against a protester during this incident.

On November 5, 2020, the CCRB interviewed Lieutenant Henry Daverin (**Board Review 12**). Lt. Daverin explained he was at Penn Street and Wythe Avenue when the officers started making arrests for violating the mayor's curfew. Lt. Daverin started walking South on Penn Street. At some point, he assisted a police officer during the arrest of an unidentified female and continued walking on Penn Street towards Bedford Avenue. Lt. Daverin did not know what happened to the unidentified female but believed she may have been brought to Penn Street and Wythe Avenue. Lt. Daverin did not recall taking any civilians into custody or assisting any other officers in making arrest or having any other interactions with additional civilians. Lt. Daverin told the CCRB that he did not recognize the names of § 87(2)(b) and § 87(2)(b). He was also given a physical description of § 87(2)(b) and § 87(2)(b) however, these descriptions did not remind him of any specific individuals he interacted with on that date. A synopsis of the incident involving § 87(2)(b) and § 87(2)(b) did not remind Lt. Daverin of any specific incident he was involved in or that he witnessed. When asked if he brought any arrestees to a police officer and instructed the officer to take them to the 90<sup>th</sup> Precinct, he said he did not. Lt. Daverin stated he did not pepper spray anyone because he does not carry pepper spray because he questions its effectiveness and he did not observe any officer using pepper spray against protesters on this date. Lt. Daverin did not use physical force against protesters as he walked on Penn Street other than the one used during the arrest of the unidentified female.

Lt. Daverin was read a description for a Hispanic or African American male, in his 40's, 5'10" tall, bald and who was in uniform, wearing a white shirt. Lt. Daverin said this description did not remind him of any supervisor who was present on this date. Lt. Daverin could not identify any officer who is a White male, in his 40's, 6'0" tall, with heavy build, probably bald, and who was wearing a white shirt. Lt. Daverin was not aware of a civilian requesting medical treatment to another officer.

On November 19, 2020, Lieutenant Michael Butler was interviewed by the CCRB (**Board Review 13**). Lt. Butler acknowledged being at this protest and said he may have walked an arrestee to Wythe Avenue and Penn Street, but did not recall walking an arrestee to Penn Street and Bedford Avenue. Lt. Butler said he did not recall giving any specific instructions to officers as to what to do or who to arrest or witness any other supervisor doing this. Lt. Butler said he assisted in supervising certain arrests. Lt. Butler stated that he assisted other officers in putting protesters in handcuffs and used force to do so. Lt. Butler was given § 87(2)(b) and § 87(2)(b)'s physical description, but he stated these descriptions did not bring back his recollection of an individual he interacted with. Lt. Butler was also given a synopsis of § 87(2)(b) and § 87(2)(b)'s incidents. He stated this information did not bring back his recollection of any incident he was involved in or that he witnessed. Lt. Butler explained to the CCRB that he does not carry pepper spray because he broke part of the pepper spray bottle and never replaced it. Lt. Butler stated that

he did not recall seeing any supervisor use pepper spray against protesters on this date. Lt. Butler said that no protester asked him to obtain medical assistance or water for them to rinse their eyes. Lt. Butler was given a description for a Hispanic or African American male, in his 40's, 5'0" tall, bald and who was wearing a white shirt. Lt. Butler said that this description did not remind him of any particular supervisor he personally knew. Lt. Butler could not identify any officer who is a White male, in his 40's 6'0" tall, with heavy build, probably bald and who was wearing a white shirt.

On February 10, 2021, the CCRB interviewed Chief Jeffrey Maddrey (**Board Review 14**). Chief Maddrey explained he came to Penn Street and Wythe Avenue, observed the confrontation, and told the officers to stand down and return to their post and told the protestors to "have a good night and go home." The protestors then dispersed in an orderly fashion while others spoke to Chief Maddrey. Right after, Chief Maddrey left Penn Street and Wythe Avenue and resumed patrol. Chief Maddrey did not come into physical contact with any civilian that evening and did not observe any officer use force against any civilian at Penn Street and Wythe Avenue. Chief Maddrey was not aware of anything that happened later, including any subsequent arrests at Penn Street and Wythe Avenue. Chief Maddrey did not see pepper spray deployed on any civilian at Penn Street and Wythe and did not learn of any pepper spray being used after the fact. Chief Maddrey did not witness and was not aware of any civilian being pushed to the ground or requesting medical attention. Chief Maddrey was unaware of any white shirted officer described as a Hispanic or Black male in their 40's, standing 5'10" tall and said that no Chief fit that description.

On March 24, 2020, DI Glynn was interviewed by the CCRB (**Board Review 15**). DI Glynn explained that he came to Penn Street and Wythe Avenue, where he observed hundreds of protestors in the street and approximately 80 to 100 officers. DI Glynn then ordered the officers to assemble in a shoulder-to-shoulder line formation at the intersection. At some point, the line of officers broke, and officers proceeded to advance up the block. DI Glynn did not direct them to do so and did not hear anyone else give this order. The only ranking officer DI Glynn could positively recall seeing at the scene was DI Skretch, but he did not recall where, when or what DI Skretch was doing or whether he was directly involved at the line. After the officers moved up Penn Street, DI Glynn independently decided to follow them. As he advanced, DI Glynn saw a group of protestors fighting with officers as the officers appeared to begin effecting arrests. DI Glynn physically assisted in the arrest of a white or Hispanic male only. He did not recall being involved in any other encounters and/or arrests, whether physically, or in a supervisory or logistical capacity. DI Glynn was given § 87(2)(b) s and § 87(2)(b) s physical descriptions and a synopsis of this incident. However, this information did not bring back DI Glynn's recollection. DI Glynn did not observe officers use any force on any individuals while he was present at Penn Street and Wythe Avenue, nor did he recall observing the use of pepper spray against protestors as he moved up Penn Street. DI Glynn did not recall hearing any protestors requesting medical assistance for being pepper sprayed. He did not recall taking or transferring custody of any arrested individuals for further detainment or prisoner transport elsewhere. He did not recall being aware of any injured protestors at the location.

§ 87(2)(g)

### **Allegation Recitation and Disposition**

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 16**)
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 20**).

**Mediation, Civil and Criminal Histories**

- This complaint was unsuitable for mediation.
- As of May 24, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**Board Review 17**).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (**Board Review 18**).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (**Board Review 21**).

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Squad No.:        9

Investigator:    Juan Arango                      Inv. Juan Arango                      07/09/2021  
   Signature                      Print Title & Name                      Date

Squad Leader:   Monique West                      IM Monique West                      7/27/2021  
   Signature                      Print Title & Name                      Date

Reviewer:        \_\_\_\_\_  
   Signature                      Print Title & Name                      Date